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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,640	04/24/2001	Russell L. Kress	KRESS-305	3978

7590

01/28/2005

Mr. Edward J. Timmer
Walnut Woods Centre
5955 W. Main Street
Kalamazoo, MI 49009

EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,640

Applicant(s)

KRESS, RUSSELL L.

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-8,11-15,19-23 and 26-33 is/are rejected.
- 7) ☒ Claim(s) 3-5,9,10,16-18,24 and 25 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claims 2, 23, are cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 6, 14, is rejected under 35 U.S.C. 102(b) as being anticipated by Todd.

Regarding claim 1, Todd shows a stairway, comprising a pair of laterally spaced apart elongated stringers and a plurality of integral riser surfaces and integral tread surfaces extending between said stringers to form steps, said stringers, riser surfaces and tread surfaces being formed as one-piece of synthetic plastic (Abstract).

Todd shows a plurality of individual preformed tread members (16) with a respective individual tread member fastened (Col. 2, Line 35-40) on a respective one of the tread surfaces (Fig. 1-4).

Regarding claim 6, Todd shows each stringer (A) includes a first upstanding wall (A) and a laterally extending wall (B) (see Fig. 1 attached).

Regarding claim 14, Todd shows wherein the tread surfaces are configured to include an integral reinforcement (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Method claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd in view of Lint.

Regarding method claim 26, Todd shows polyester resin saturating a lay up of fiberglass over a stair mold (Col. 1, Line 45-55) (Fig. 1) to form a one-piece stairway comprising a pair of laterally spaced apart stringers and a plurality of integral rise surfaces and integral tread surfaces forming steps (Fig. 1). Todd does not show spraying plastic material. Lint shows spraying plastic material (Col. 2, Line 20-30) on a mold surface (10) to form a mold (Col. 4, Line 44) or structure. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to form Todd with the process of Lint as a rapid, even, way of applying a polymer.

Todd shows preformed tread members (16) fastened (Col. 2, Line 35-45) on the tread surface (Fig. 1).

Regarding method claims 27, 28, Todd shows an outer filled resin layer of polyester over a layer of fiberglass (Col. 1, Line 50). Todd does not show mineral particles. Lint shows processing fillers, which may be mineral particles (Col. 2, Line 66) on the filled resin layer. Lint does not show mineral particles in his chopped fiber reinforced filled resin layers. Mineral particles in chopped fiber reinforced filled resin layers are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have mineral particles or processing fillers to be sprayed as a heavy coat as in Lint in the structure of Todd.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 12-15, 19-22, 26-28, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 7, 9-14, 17, 18, of U.S. Patent No. 6543191. Although the conflicting claims are not identical, they are not patentably distinct from each other because.

Regarding claim 1, Kress '191 claims 1, 7, 9, teach a stairway, comprising a pair of laterally spaced apart elongated stringers and a plurality of integral riser surfaces and integral tread surfaces extending between said stringers to form steps, said stringers, riser surfaces and tread surfaces being formed as one-piece of synthetic resin. Synthetic resin is held to be plastic.

Kress '191 claims 1, 7, 9, teach a plurality of individual preformed tread members with a respective individual tread member fastened on a respective one of the tread surfaces.

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Regarding claim 12, Kress '191 claim 9 teaches the stairway wherein said plastic material comprises one or more outer filled resin layers and one more inner fiber reinforced filled resin layers applied on the outer filler resin layers.

Regarding claim 13, Kress '191 claim 10 teaches the stairway wherein said one or more outer filled resin layers each comprises a synthetic resin and mineral particles and said one or more inner fiber reinforced resin layers each comprises resin, mineral particles and chopped fibers.

Regarding claim 14, Kress '191 claim 3 teaches wherein said tread surfaces are configured to include an integral reinforcement.

Regarding claim 15, Kress '191 claim 4 teaches the integral reinforcement comprises a rib extending along a length of each tread surface and having concave cross-sectional configuration residing below plane defined by said tread surface.

Regarding claim 19, Kress '191 claim 13 teaches a lower surface of each said preformed tread member includes plurality of pilot protrusions that are received in a respective one of said holes said underlying tread surface.

Regarding claim 20, Kress '191 claim 14 teaches the fasteners include an enlarged fastener head captured in each tread member and a threaded shank received in a respective hole of said tread surface.

Regarding claim 21, Kress '191 claim 17 teaches the fasteners each include an enlarged fastener head captured said landing member and threaded shank received in a respective hole of said landing surface.

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Regarding claim 22, Kress '191 claim 1, 7, 9, a stairway comprising a pair of laterally spaced apart elongated stringers and a plurality of integral riser surfaces and integral tread surfaces extending between said the stringers so as form steps, said stringers, riser surfaces and tread surfaces being formed as one-piece of plastic material.

Kress '191 claims 1, 7, 9, teach a plurality of individual preformed tread members with a respective individual tread member fastened on a respective one of the tread surfaces.

Regarding method claims 26-28, the claimed methods are the obvious methods of making a stairway with Kress '191's modified prefabricated stairway and method.

Claims 29-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 7, 9, 11, 14, of U.S. Patent No. 6543191 to Kress in view of Hussey.

Regarding claim 29, Kress '191 claims 1, 7, 9, 11, claim at least one preformed tread member comprising plastic material fastened on at least one tread, said plastic material comprising an outer ceramic filled gelcoat layer and a fiber mat reinforced resin layer under the outer ceramic filled gelcoat layer.

Kress '191 claims 1, 7, 9, 11, do not show a stairway having a plurality of treads made of a material selected from the group consisting of wood, metal, concrete. Hussey shows a stairway (42) having a plurality of treads (46) made of wood (Col. 1, Line 36). It would have been obvious to one of ordinary skill in the art at the time the

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present invention was made to modify Kress '191 with the wood stairs of Hussey since wood is a strong, structural, traditional material for stairs.

Regarding claim 30, Kress '191 claim 1 claims a tread member and steps. Being a different color is an obvious design choice for aesthetic reasons.

Regarding claim 31, Kress '191 does not show the tread member is fastened on a worn or damaged tread of said stairway. It would have been an obvious design choice to use the tread member where it would be useful.

Regarding claim 32, the claimed method is the obvious method of repairing Kress '191 modified prefabricated stairway and method.

Regarding claim 33, Kress '191 claim 14 claims at least one preformed tread member includes a fastener having a fastener head captured therein.

Claim 6-8, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6543191 to Kress in view of Schmidt.

Refer to Fig. 6 attached.

Regarding claim 6, Kress '191 claims 1, 7, 9, claim the basic claim structure. Kress '191 claims 1, 7, 9, do not claim a first upstanding wall and a laterally extending wall. Schmidt shows each stringer includes a first upstanding wall (B) and a laterally extending wall (C) (Fig. 6). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use walls as in Schmidt in the structure of Kress '191 to form a guardrail.

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Regarding claim 7, Kress '191 claims 1, 7, 9, claim the basic claim structure. Kress '191 claims 1, 7, 9, do not claim receptacles. Schmidt shows the laterally extending wall includes receptacles (D) formed integrally therein (Fig. 6). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use receptacles as in Schmidt in the structure of Kress '191 to hold the second upstanding wall.

Regarding claim 8, Kress '191 claims 1, 7, 9, claim the basic claim structure. Kress '191 claims 1, 7, 9, do not claim a second upstanding wall. Schmidt shows a second upstanding wall (E) extending upwardly from the laterally extending wall (Fig. 6). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a second upstanding wall as in Schmidt in the structure of Kress '191 to extend the height of the guardrail.

Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 9, of U.S. Patent No. 6543191 to Kress in view of Schmidt in further view of Bni.

Regarding claim 11, Kress '191 claims 1, 7, 9, claim the basic claimed structure. Kress '191 claims 1, 7, 9, do not claim a reinforcing gusset. Bni shows a gusset plate (page 278). It would have been an obvious design choice to use a gusset as in Bni in the structure of Schmidt for support of the laterally extending wall from the first upstanding wall.

Claim Objections

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Claims 3-5, 9-10, 24-25, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-18 depend from cancelled claim 2; therefore, they are objected to.

Response to Arguments

Applicant's arguments filed 11/3/04 have been fully considered but they are not persuasive.

Applicant argues that Kress '191 does disclose stairway comprising a pair of laterally spaced apart elongated stringers adapted to be disposed between levels of a building and a plurality of integral riser surfaces and integral tread surfaces extending between the stringers so as to form steps.

Examiners maintains Kress '191 discloses a stairway (10) whose sides made stringers which are laterally spaced apart and elongated and a plurality of integral riser surfaces (21) and integral tread surfaces (22) extending between the stringers so as to form steps. It would be obvious to use the steps between levels of a building.

Applicant argues that Schmidt does not disclose a gusset.

Examiner has used Bni to show a gusset plate.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lyons reveals a prefabricated stair. Hayman et al. reveals a scaffold stair. Rinke shows an insertable swimming pool step assembly. Howard shows reinforced fiberglass steps.

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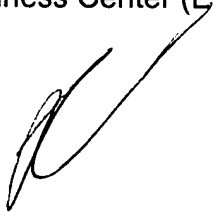
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SV



**BRIAN E. GLESSNER
PRIMARY EXAMINER**